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Chapter 7 Trustee
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8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **SANTA ANA DIVISION**
11

12 In re
13 JAMIE LYNN GALLIAN,
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15 Debtor.
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Case No. 8:21-bk-11710-SC
Chapter 7

**CHAPTER 7 TRUSTEE’S REPLY
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
APPLICATION TO EMPLOY REAL
ESTATE BROKER AND TO ENTER
INTO EXCLUSIVE LISTING
AGREEMENT; AND REQUEST FOR
JUDICIAL NOTICE IN SUPPORT
THEREOF**

Date: September 13, 2022
Time: 11:00 a.m.
Place: Courtroom “5C”
411 W. 4th Street
Santa Ana, California 92701

23 TO THE HONORABLE SCOTT C. CLARKSON, UNITED STATES BANKRUPTCY
24 JUDGE, AND INTERESTED PARTIES:

25 Jeffrey I. Golden, as Chapter 7 Trustee for the bankruptcy estate (the “Estate”) of Jamie
26 Lynn Gallian (the “Debtor”), hereby replies to the Debtor’s opposition (*docket no. 208*) (the
27 “Opposition”) to the Trustee’s Application to Employ Real Estate Broker Coldwell Banker Realty
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1 and Agents William Friedman and Greg Bingham Pursuant to 11 U.S.C. §§ 327 and 328 (*docket*
2 *no. 162*) (the “Application”), as follows:

3 The Debtor’s Opposition to the Application appears to be based on the Debtor’s mistaken
4 belief that the Trustee and the Debtor’s estate have no interest in the manufactured home located at
5 16222 Monterey Lane, Space #376, Huntington Beach, California 92649 (“Property”), which is the
6 Debtor’s residence, the Debtor’s incorrect interpretation of the Court’s order denying her claimed
7 exemption in the Property, and the Debtor’s incorrect assumptions on what may or may not happen
8 in the future with respect to a sale of the Property. As discussed below, the Debtor’s arguments are
9 without merit and do not support denial of the Application to employ the Broker.

10 1. As an initial matter, the Trustee has a duty to collect and reduce to money property
11 of the estate for which the Trustee serves. 11 U.S.C. § 704(a). With the Court’s approval, the
12 Trustee may employ professionals to assist the Trustee in carrying out his duties. 11 U.S.C. §
13 327(a). Here, the Trustee seeks to employ Coldwell Banker Realty and Agents William Friedman
14 and Greg Bingham (the “Broker”) to facilitate the sale of the Property and assist the Trustee in
15 administering the equity in the Property for the benefit of the estate’s creditors. As discussed
16 below, the Debtor’s estate is the 100% owner of J-Sandcastle Co, LLC (“Sandcastle”), which held
17 title to the Property on the petition date. The Application clearly establishes that the Broker (and
18 its agents) is highly qualified to represent the estate in connection with the sale of the Property and
19 is disinterested as required by 11 U.S.C. §§ 327 and 328. Thus, the standard for employment of the
20 Broker has been satisfied, and the Court should approve the Application as requested.

21 2. The Debtor’s arguments that the estate has no interest in the Property and that the
22 Trustee cannot administer the Property (or its equity) are incorrect. On the Petition Date, title to
23 the Property was vested in Sandcastle, an LLC wholly owned by the Debtor. *See Exemption*
24 *Order*, docket no. 177, at p. 12 of 12.

25 Pursuant to 11 U.S.C. § 541(a)(1), all of Debtor’s contractual rights and interest in
26 Sandcastle became property of the estate by operation of law when the Debtor filed bankruptcy.
27 As a result, on the petition date, the Debtor’s 100% membership interest in Sandcastle became
28 property of the estate and the Trustee stepped into the Debtor’s shoes, succeeding to all of her

1 rights in Sandcastle, including the right to control it. *Fursman v. Ulrich (In re First Protection,*
2 *Inc.)*, 440 B.R. 821, 830-32 (B.A.P. 9th Cir. 2010). Thus, to the extent that the Trustee is required
3 to do so, there is no restriction on the Trustee acting as sole member and manager of Sandcastle
4 and causing Sandcastle to sell the Property, subject to Court approval on notice to the Debtor and
5 creditors, of course.

6 Moreover, the Debtor caused Sandcastle to deed the Property to herself post-petition.¹ *See*
7 Exemption Order, docket no. 177, at p. 10 of 12. Accordingly, whether title is held by Sandcastle
8 or the Debtor, the Trustee believes that he will be able to transfer title to a third party purchaser
9 after filing a sale motion,

10 3. The Debtor's additional arguments that there may be insufficient equity in the
11 Property to permit a sale, some of which arguments are raised only in her declaration attached to
12 the Objection,² are not a basis to deny employment of the Broker. As set forth above, whether
13 there is equity in the Property is not a basis under 11 U.S.C. § 327(a) to deny the Trustee's
14 Application to employ the Broker. The Trustee believes that based on the valuation provided by
15 the Broker, that there will be equity for creditors. However, the Property has not yet been exposed
16 to the market and the Trustee needs to employ the Broker and list the Property in order to
17 determine whether a buyer can be found and whether a sale is warranted. It is also irrelevant for
18 the Debtor to speculate how the Trustee will address any alleged liens that may be on the Property.³
19 Either the sale motion will address the equity analysis and any purported liens on the Property, or
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21 ¹ The Debtor's reliance on *Patrick A. Casey, P.A. v. Hochman*, 963 F.2d 1347, 1351 (10th Cir.
22 1992) is misplaced. Sandcastle's transfer of title to the Property to the Debtor post-petition is not
23 akin to a debtor's post-petition invention of a patentable device that did not exist on the petition
24 date, which was the issue in *Casey*. Rather, here, on the petition date the Debtor owned a
membership interest in Sandcastle, and Sandcastle was on title as the owner the Property. The
Debtor then caused Sandcastle post-petition to transfer title to the Property to the Debtor.

25 ² Concurrently herewith the Trustee is filing evidentiary objections to the Debtor's declaration.

26 ³ The Trustee will, however, point out that the Debtor neglects to inform the Court that the Debtor
27 is also the 100% owner and manager of J-Pad, LLC, which purports to have a lien on the Property.
28 *See* docket nos. 38, 39, and 72 (Debtor's amended schedules). The Debtor's ownership interest and
rights in relation to J-Pad, LLC, also became property of the estate when the Debtor filed
bankruptcy.

1 the Property will not be able to be sold. The Debtor never sought or obtained a stay of the
2 Exemption Order, so that order is effective at this time, and there is no exemption in the Property.
3 The Debtor should not be given a free stay while her appeal is pending.

4 Based upon the foregoing, the Court should disregard the Debtor's Opposition, approve the
5 Application and authorize the Trustee to employ the Broker, as the Trustee's real estate broker to
6 list and aid the Trustee in marketing and selling the Property. The Trustee further requests such
7 other relief as is just and proper.

8
9 DATED: September 6, 2022

DANNING, GILL, ISRAEL & KRASNOFF, LLP

10
11 By: /s/ Aaron E. de Leest

12 AARON E. DE LEEST

13 Attorneys for Jeffrey I. Golden, Chapter 7 Trustee
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REQUEST FOR JUDICIAL NOTICE

Jeffrey I. Golden, as Chapter 7 Trustee for the bankruptcy estate (the “Estate”) of
Jamie Lynn Gallian (the “Debtor”), requests that the Court take judicial notice of the following
facts.

1. The Debtor’s amended schedules list that the Debtor is the 100% owner of
J-Sandcastle Co, LLC and J-Pad, LLC. *See* docket nos. 38, 39, and 72 (Debtor’s amended schedule
A/B, # 19).

DATED: September 6, 2022

DANNING, GILL, ISRAEL & KRASNOFF, LLP

By: /s/ Aaron E. de Leest
AARON E. DE LEEST
Attorneys for Jeffrey I. Golden, Chapter 7 Trustee

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is 1901 Avenue of the Stars, Suite 450, Los Angeles, CA 90067-6006.

A true and correct copy of the foregoing document entitled (*specify*): CHAPTER 7 TRUSTEE'S REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF APPLICATION TO EMPLOY REAL ESTATE BROKER AND TO ENTER INTO EXCLUSIVE LISTING AGREEMENT; AND REQUEST FOR JUDICIAL NOTICE IN SUPPORT THEREOF will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On September 6, 2022 I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page.

2. SERVED BY UNITED STATES MAIL: On September 6, 2022, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page.

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on September 6, 2022, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☒ Service information continued on attached page.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

September 6, 2022

Date

Beverly Lew

Printed Name

/s/ Beverly Lew

Signature

ADDITIONAL SERVICE INFORMATION (if needed):

1. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (“NEF”)

Aaron E DE Leest on behalf of Trustee Jeffrey I Golden (TR)
adeleest@DanningGill.com, danninggill@gmail.com;adeleest@ecf.inforuptcy.com

Robert P Goe on behalf of Creditor The Huntington Beach Gables Homeowners Association
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Robert P Goe on behalf of Plaintiff The Huntington Beach Gables Homeowners Association
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Jeffrey I Golden (TR) lwerner@go2.law, jig@trustesolutions.net;kadele@go2.law

D Edward Hays on behalf of Creditor Houser Bros. Co. dba Rancho Del Rey Mobile Home Estates
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D Edward Hays on behalf of Plaintiff Houser Bros. Co.
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Mark A Mellor on behalf of Defendant Randall L Nickel
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Valerie Smith on behalf of Interested Party Courtesy NEF claims@recoverycorp.com

United States Trustee (SA) ustpregion16.sa.ecf@usdoj.gov

3. SERVED BY OVERNIGHT MAIL

Debtor, in pro per	The Honorable Scott C. Clarkson
Jamie Lynn Gallian	U.S. Bankruptcy Court
16222 Monterey Lane, Space #376	411 W. Fourth Street, Suite 5130
Huntington Beach, CA 92649	Santa Ana, CA 92701